

Letter Library for Discipline and Adverse Actions

OVERVIEW OF SAMPLE MEMORANDA

To facilitate the drafting and reviewing of disciplinary memoranda, the following sample disciplinary memoranda are provided to assist you in your considerations regarding corrective action:

1. **Counseling Memorandum** – Advises an employee of conduct or performance expectations which, if not corrected, may lead to formal discipline.
2. **Warning Memorandum** – Also advises an employee of conduct or performance expectations which, if not corrected, may lead to formal discipline but using the term “warning” connotes a more stern approach.
3. **Referral to the Employee Assistance Program (EAP)** – Advises an employee of the services offered by the EAP that are available, confidential and voluntary.
4. **Letter of Instruction** – Advises an employee of specific policies or procedures which must be followed.
5. **Leave Restriction** – Advises an employee of their leave abuse or failure to adhere to leave procedures and provides specific guidance to the employee for their requesting and use of leave.
6. **Letter of Reprimand** – Advises an employee of the misconduct or inappropriate action and if repeated, more severe disciplinary action will be taken. This is considered formal discipline and a copy of the memorandum is placed in the employee’s Official Personnel Folder (OPF).
7. **Unacceptable Performance and Performance Improvement Period (PIP)** – Advises an employee of the supervisor’s determination that the employee’s performance is considered to be at an “unacceptable” level in one or more critical elements for critical success factors, the specific performance deficiencies, the requirements for acceptable performance, and the assistance that will be provided to the employee (training, weekly meetings, etc.) during the 60-day opportunity period.
8. **Denial of Within-Grade Increase (WGI)** – Advises an employee that their performance is less than an acceptable level of competence (i.e., a rating of less than “Fully Met Expectations”), the employee’s right to request reconsideration, and the name of the Deciding Official.
If reconsideration is requested, a decision memorandum must be issued to the employee that advises of the Deciding Official’s decision, basis for the decision,

and the employee's grievance and Equal Employment Opportunity (EEO) complaint rights.

- 9. Termination During the Trial Period** – Advises an employee of the performance deficiencies and/or misconduct and the determination that such actions have demonstrated the failure to exhibit acceptable performance and conduct for the position.

- 10. Proposal and Decision Memoranda for Suspensions of 14-Days or Less** – The proposal memorandum advises an employee of the misconduct, the employee's right to respond orally and/or writing to the proposed suspension, the right to a representative, the right to request up to eight (8) hours of administrative leave to prepare their response, and the name of the Deciding Official.

The decision memorandum advises an employee of the Deciding Official's decision, the basis for the decision, and the employee's grievance and Equal Employment Opportunity (EEO) complaint rights.

- 11. Proposal and Decision Memoranda for Suspensions of More Than 14-Days or Removal** - The proposal memorandum advises an employee of the misconduct, the employee's right to respond orally and/or writing to the proposed suspension, the right to a representative, the right to request up to eight (8) hours of administrative leave to prepare their response, and the name of the Deciding Official.

The decision memorandum advises an employee of the Deciding Official's decision, the basis for the decision, and the employee's appeal rights (Merit System Protection Board (MSPB) and EEO complaint).

- 12. Acknowledgement of Receipt** – Serves as documentation to confirm an employee's receipt of a memorandum. An employee is not obligated or required to sign the acknowledgement of receipt. If an employee refuses to sign, the supervisor should initial the acknowledgement of receipt and annotate it to read "employee refused to sign" and date.

Note that these letters are SAMPLES - the specific information contained will not necessarily apply to your situation and are provided as an example only. You will need to incorporate the specific facts and circumstances that apply to your case.

Also, attached is "GUIDELINES" to provide guidance regarding the selection of an appropriate penalty.

Before any of the above memoranda are issued to an employee, it must be reviewed by your Office of Human Resources. The HR staff is available to provide technical support, assistance and to answer any questions you may have regarding your specific concern or the disciplinary process.

Sample Disciplinary Memoranda for Supervisors

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S A M P L E

MEMORANDUM

TO: **Employee**
 Title
 Organization

FROM: **Supervisor**
 Title
 Organization

SUBJECT: **Proposed Removal**

I. Introduction

I propose to remove you from your position as a TITLE & GRADE, not earlier than thirty (30) days from your receipt of this notice. The basis for this proposed action is your having provided false statements to the Agency's Office of Personnel Security General regarding your prior Federal employment on (1) the Declaration for Federal Employment, OF 306, and (2) your background security investigation form (Questionnaire for Public Trust Positions, SF-85P).

Information in this proposal for removal is referenced from the Limited Background Investigation conducted by the Office of Personnel Management (OPM). That investigation revealed that you had previously been employed by the XXX Agency.

II. Charge

Providing False Statements Regarding Prior Federal Employment on your Declaration for Federal Employment (OF 306) and Questionnaire for Public Trust Positions (SF 85P)

Specification #1

While applying for employment with this Agency as an XXX, you were provided with a security package of pre-employment forms required to initiate a background investigation. You completed and submitted to Form OF-306, "Declaration for Federal Employment."

Question #11 on the OF-306 specifically asked you, “During the last 5 years, were you fired from any job for any reason, did you quit after being told that you would be fired, did you leave any job by mutual agreement because of specific problems, or were you debarred from Federal employment by the Office of Personnel Management?” You answered, “No” in response to this question.

The instructions for the signature block, Item #16, on the OF-306 specifically state:

*“**I certify** that, to the best of my knowledge and belief, all of the information on and attached to this Declaration for Federal Employment, including any attached application materials, is true, correct, complete, and made in good faith. **I understand** that a false or fraudulent answer to any question on any part of this declaration or its attachments may be grounds for not hiring me, or for firing me after I begin work, and may be punishable by fine or imprisonment. **I understand** that any information I give may be investigated...”*

On the OF-306 below the above instructions, you signed and dated this document as the applicant in block #16a, “Applicant’s Signature,” on November 16, 1999. Upon your appointment with this Agency, you again signed and dated this document as the appointee in block #16b, “Appointee’s Signature,” on December 29, 1999.

As documented below, the information you provided on the OF-306 relative to your prior Federal employment was false.

Specification #2

As part of your employment requirements, the Office of Personnel Management (OPM) conducted a Limited Background Investigation (LBI). To initiate the background investigation, you completed and submitted to CSOSA form SF-85P, “Questionnaire for Public Trust Positions.”

Question #12 on the SF-85P specifically asked you, “Has any of the following happened to you in the last 7 years? If “Yes,” begin with the most recent occurrence and go backward, providing date fired, quit, or left, and other information requested.”

The SF-85P further instructed you to:

“Use the following codes and explain the reason your employment was ended:

1. Fired from a job.
2. Quit a job after being told you’d be fired.
3. Left a job by mutual agreement following allegations of misconduct.
4. Left a job by mutual agreement following allegations of unsatisfactory performance.
5. Left a job for other reasons under unfavorable circumstances.”

You answered, “No” in response to this question.

The instructions above the signature block on page 7 of the SF-85P direct you as follows: “After completing this form and any attachments, you should review your answers to all questions to make sure the form is complete and accurate, and then sign and date the following certification and sign and date the release on page 8.”

The certification statement specifically reads as follows:

“Certification That My Answers Are True

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both.”

On the SF-85P below the above instructions, you signed and dated this document on November 16, 1999.

Again, the information you provided on the SF-85P relative to your prior Federal employment was false.

You were employed as an XXXI with the XXX from January 1988 until your resignation in October 1999. The investigation conducted by OPM revealed the following information regarding that employment:

- On February 1999, the XXX issued a memo informing you of a proposal to remove you from your position.
- On September 13, 1999, the XXX issued a memo to you concurring with the proposal to remove you from your position based on the following misconduct charges: (1) Conduct unbecoming a law enforcement officer (i.e., misuse of position and untruthfulness); (2) Gross neglect of duty (abandonment of a duty station without proper authority and failure to respond in a timely manner.); (3) Untruthfulness; and (4) Conduct unbecoming a law enforcement officer (i.e., striking a fellow officer).
- On September 14, 1999, the XXX ordered your removal from the Federal service based on the misconduct charges stated above.
- You chose to resign on September 14, 1999.

Based upon the above results from the OPM investigation, your representations on the security forms regarding your prior Federal employment were false.

When questioned during a Personal Subject Interview (PSI), you stated that you were a former police officer with the XXX and resigned from the position on 09/14/99. You stated that you “left this position to obtain a job with greater career advancement.” You also stated, that within the last seven years you have not been fired from a job, have not quit a job after being told you would be fired, have not left a job by mutual agreement following allegations of misconduct, have not left a job by mutual agreement following allegations of unsatisfactory performance, and have not left a job for other reasons under unfavorable circumstances. The statements you provided during the PSI were false.

III. Conclusion

On November 16, 1999, several months after a settlement agreement was reached regarding your resignation under adverse conditions from the XXX, you responded “No” to question #11 on the OF-306 and question #12 on the SF-85P. Your response of “No” to these questions was incorrect and not a factual representation of the circumstances relative to your prior employment with the USMS. Based upon the recency of the settlement agreement with respect to your completion of the OF-306 and SF-85P, you knew or should have known that the circumstances which allowed for your resignation from the XXX should have been revealed and, by not doing so, the information you provided was false.

Instructions provided on the OF-306 and SF-85P are clear regarding the requirement to report accurate, correct, true, and complete information. Conversely, these documents are clear regarding the consequences for providing false, untrue, inaccurate, or incorrect information.

On December 29, 1999, upon your appointment with this Agency, you had the opportunity to correct your answer to question #11 on the OF-306, but failed to do so. You again signed and dated this document as the appointee in block #16b, “Appointee’s Signature.”

During the PSI held on April 20, 2000, you had an opportunity to correct your answer to question #12 on the 85P. You failed to do so. You maintained your false representation regarding your prior employment with the XXX.

As an XXX you hold a position of public trust. As such, you are expected and required to conduct yourself in a manner that reflects honesty, integrity, and trustworthiness. Your false representations on the security forms regarding your prior federal employment impeach your reliability, veracity, and trustworthiness. At the very heart of the employee-employer relationship is the expectation that an employee is honest, candid, and engages in ethical conduct. For a law enforcement agency, this expectation for an employee is critical.

You have failed to demonstrate the honesty, trustworthiness, and ethical conduct required of a law enforcement officer. When an employee demonstrates that he can no longer be thought of as honest, trustworthy, and of good character and reputation, he cannot be

entrusted with working within our criminal justice system. Furthermore, your lack of candor and failure to adhere to policy as demonstrated by your past discipline has irreparably diminished the confidence placed in you to be an honest and trustworthy employee.

In proposing this action, I have considered the following:

- nature and seriousness of these offenses;
- the impact of your actions upon your position and ability to serve as an XXX;
- your length of service;
- your employment record;
- the impact of your performance and conduct upon your supervisor's confidence in your ability to perform your duties;
- your failure to adhere to the instructions you were provided;
- the impact of the offense and its impact upon this Agency;
- consistency of penalty imposed upon employees for similar offenses; and
- the effectiveness of alternative sanctions to deter such conduct in the future.

For the reasons stated above and for the efficiency of the service, I propose to remove you from your position as an XXX with the Agency.

IV. Procedural Rights

You have the right to respond to this proposed action orally, in writing or both, submitting any affidavits or evidence in support of your reply to the Deciding Official, **[Next Higher Level Official] [Office], [Address]**. The documents relied upon in proposing this action are attached.

Based upon the restrictions governing the release of information from the background investigation, the Agency has received permission from OPM to release only the specific documents from the background investigation directly relied upon in proposing this action. Copies of these documents are included in the attached case file. If you wish to review your background investigation file, please contact XXX, Security Officer, Office of Personnel Security, at XXX.

You are entitled to be represented by an attorney or other representative of your choosing. You must designate your representative, in writing, to **(OHR Staff Member)**, Office of Human Resources, XXX.

Your reply, if any, should be submitted within ten (10) calendar days of your receipt of this notice. Full consideration will be given to your submitted reply. Consideration will also be given to extending this period if you timely submit a written request stating the reasons for such an extension. You will be notified, in writing, of the decision after consideration of your reply. If no reply is made, a decision will be made at the expiration of the time allowed for your reply.

If you are experiencing concerns of personal issues that could require assistance or counseling services, the Employee Assistance Program (EAP) is available to you. XXX is the Agency's EAP Counselor and he is available to provide counseling/assistance to employees who may be experiencing emotional, financial, substance abuse, legal, marital, or medical problems. The EAP is voluntary and confidential. He may be reached at XXX.

If you have any questions concerning your procedural rights in this matter, you may contact **(OHR Staff Member)**, Office of Human Resources, at **XXXX**.

Please sign, date and return the accompanying Acknowledgment Form as acknowledgment of receipt of this memorandum and attachments.

Attachments: Acknowledgment Form
Case File

S A M P L E

MEMORANDUM

**TO: Employee
 Title
 Organization**

**FROM: Supervisor
 Title
 Organization**

SUBJECT: Counseling Memorandum

This Counseling Memorandum is issued to you based upon the following:

On December 8, 2000, you used a government issued Mastercard to order a clear desk pad from Corporate Express for a staff member without authorization or approval. On December 22, 2000, you submitted the Agency Credit Card Transaction Form to me for approval. After careful research, it has been determined that this was an unauthorized purchase that was submitted for approval 15 days after it had been illegally purchased and after the staff member received and used the item.

You have been counseled previously regarding the requirement to obtain the appropriate authorization for any purchases to be made on the government issued Mastercard prior to ordering or purchasing any supplies, services or equipment. As evidenced by the above, you have failed to adhere to this instruction and requirement. After consideration of the situation and acknowledging the fact that the staff member was already using item, I have decided to issue a Letter of Counseling instead of requiring you to personally pay for the item.

I hope that no further action will be necessary and that this Letter of Counseling will impress upon you the need to immediately adhere to the rules and regulations established for the government Mastercard. However, you are advised that any repeated incidents of illegal purchases will result in more severe disciplinary action being taken against you, up to an including removal. This Letter of Counseling is to advise and instruct you to follow all procedures according to the Agency Credit Card Manual and as explained in the Agency Credit Card Training.

If you are experiencing concerns or personal issues that could require assistance or counseling services, the Employee Assistance Program (EAP) is available to you. XXX

is the Agency's EAP Counselor and he is able to provide counseling/assistance to employees who may be experiencing emotional, family, alcohol/drug, legal, marital, financial, or medical problems. The EAP is confidential and voluntary. He can be reached at XXXXXXXXXX.

If you are experiencing technical problems with your work or require any assistance from me, please do not hesitate to contact me. I am, as always, available to assist you at any time.

Please sign, date and return the accompanying Acknowledgment Form as acknowledgment of your receipt of this memorandum.

Attachment: Acknowledgment Form

S A M P L E

MEMORANDUM

**TO: Employee
 Title
 Organization**

**FROM: Supervisor
 Title
 Organization**

SUBJECT: Warning Memorandum

This Warning Memorandum is issued to you based upon the following:

On DATE, you came to work wearing a polo style casual shirt. When the opportunity arose to speak with you privately, I did so, reminding you that the casual shirt was inappropriate. I also reminded you that we have spoken about this issue previously. As an (AGENCY JOB TITLE), required to adhere to the Dress Code Policy, a copy of which was provided to you on DATE.

At that, you responded that you felt the Dress Code was irrelevant and that you were here to do your job. I reiterated that the Dress Code Policy must be adhered to at all times.

I am issuing this Warning Memorandum to document that I have reminded you of the applicability of the Agency Dress Code. This Warning Memorandum also formally advises you that any future failure to comply with the Dress Code Policy and any future incidents involving disrespectful conduct towards me or any other staff member will result in disciplinary action being taken against you, up to and including removal. I sincerely hope that such action will not be necessary.

This Warning Memorandum will not be placed in your Official Personnel Folder (OPF) but retained as evidence of your being counseled regarding this matter.

Please sign, date and return the accompanying Acknowledgment Form as acknowledgment of your receipt of this Memorandum.

Attachment: Acknowledgment of Receipt

S A M P L E

MEMORANDUM

**TO: Employee
 Title
 Organization**

**FROM: Supervisor
 Title
 Organization**

SUBJECT: Referral to Employee Assistance Program

The purpose of this memo is to express my concern for your welfare and to point out that your frequent absences from duty are affecting your performance. It also jeopardizes the efficiency of the office and places an undue burden on me as your supervisor and on your co-workers.

If you are experiencing concerns or personal issues that could require assistance or counseling services, the Agency's Employee Assistance Program (EAP) is available to you. XXX is the Agency's EAP Counselor and he is able to provide counseling/assistance to employees who may be experiencing emotional, family, alcohol/drug, legal, marital, financial or medical problems. The EAP is confidential and voluntary. If you are interested in the EAP, please contact XXX at XXXXXXXX.

I hope this information will be helpful to you. If you have any questions or require additional assistance, please do not hesitate to contact me.

S A M P L E

MEMORANDUM

**TO: Employee
 Title
 Organization**

**FROM: Supervisor
 Title
 Organization**

SUBJECT: Letter of Instruction

On DATE, you left the office and failed to properly lock your file cabinets in accordance with office procedures. Office security observed the unlocked file cabinets and immediately corrected this matter. Due to their intervention, no equipment or materials were missing or stolen.

During our monthly staff meeting on DATE, I reminded staff of the need to adhere to all office procedures to properly safeguard equipment and materials. You attended this staff meeting.

Attached for your review is a copy of the office procedures for safeguarding equipment and materials. You are instructed to review and to adhere to these procedures.

You are advised that this notice will be retained as evidence of the instructions given to you regarding this matter. Further, you are advised that any repeated incidents of this nature will result in disciplinary action, up to and including removal, being taken against you.

If you have any questions regarding this matter, I am available to discuss these issues with you.

Please sign, date and return the accompanying Acknowledgment Form as acknowledgment of your receipt of this memorandum.

Attachment: Office Procedures for Safeguarding Equipment and Materials

S A M P L E – NOTE: This letter contains an excess of documented absences – you would not necessarily need this much documentation.

MEMORANDUM

**TO: Employee
 Title
 Organization**

**FROM: Supervisor
 Title
 Organization**

SUBJECT: Leave Restriction

This memorandum is issued to advise you that your time and attendance (T&A) records for the period October 21, 2001 (pay period 21) through January 26, 2002 (pay period 1) have been reviewed. This review was conducted because of your excessive use of unscheduled annual and sick leave. Your official tour of duty is from 8:30am to 5:00pm.

Your T&A records indicate that you have consistently used your leave as it was earned. An audit of your T&A records for the last seven (7) pay periods indicated the following:

- Pay period 21 (October 21, 2001, through November 3, 2001)

Wednesday, October 24, 2001

You reported to duty at 9:15am. You requested and received approval on this date for 1 hour of sick leave.

Thursday, October 25, 2001

You reported to duty at 11:15am. You requested and received approval on this date for 3 hours of annual leave.

Tuesday, October 30, 2001

You reported to duty 11:15am. You requested and received approval on this date for 3 hours of sick leave.

- Pay period 22 (November 4, 2001 through November 17, 2001)

Monday, November 5, 2001

You reported for duty at 8:30am. You requested and received approval on this date 15 minutes of annual leave.

- | | |
|--------------------------------|--|
| Tuesday, November 6, 2001 | You reported for duty at 9:15am. You requested and received approval on this date for 1 hour of annual leave. |
| Thursday, November 8, 2001 | You reported for duty at 9:00am. You requested and received approval on this date for 45 minutes of annual leave. |
| Tuesday, November 13, 2001 | You reported for duty at 8:45am. You requested and received approval on this date for 30 minutes of annual leave. |
| Wednesday, November 14, 2001 | You reported for duty at 10:00am. You requested and received approval on this date for 1 hour and 30 minutes of annual leave and 15 minutes of sick leave. |
| On Thursday, November 15, 2001 | You reported for duty at 10:00am and departed at 2:30pm. You requested and received approval on this date for 3 hours and 45 minutes of sick leave. |
- Pay period 23 (November 18, 2001 through December 1, 2001)

On Friday, November 23, 2001	You departed duty at 3:00pm. You were charged 1 hour and 45 minutes of annual leave.
On Tuesday, November 27, 2001	You called in and reported that you would be arriving late. You reported for duty at 8:45am. You were charged 30 minutes of annual leave.
 - Pay period 24 (December 2, 2001 through December 15, 2001)

Tuesday, December 4, 2001	You reported for duty at 9:00am. You were charged 45 minutes of sick leave.
Monday, December 10, 2001	You reported for duty at 8:45am. You were charged 30 minutes of annual leave.
Tuesday, December 11, 2001	You reported for duty at 11:15am. You were charged 3 hours of sick leave.
 - Pay period 25 (December 16, 2001 through December 29, 2001)

- | | |
|---------------------------------|---|
| On Wednesday, December 19, 2001 | You departed duty at 2:30pm. You were charged 2 hours and 15 minutes of credit hours. |
| On Wednesday, December 26, 2001 | You were absent the entire day on pre-approved annual leave. |
- Pay period 26 (December 30, 2001 through January 12, 2002)

On Wednesday, January 9, 2002	You were absent the entire day on sick leave.
On Friday, January 11, 2002	You called in and reported that you would be arriving late. You reported for duty at 12:15pm. You were charged 1 hour of sick leave and 3 hours of credit hours.
 - Pay period 1 (January 13, 2002 through January 26, 2002)

During pay period 1	You called in three times (January 18 th , January 22 nd and January 23 rd) and reported that you would be arriving late.
January 18, 2002	You reported for duty at 12:00pm. You were placed in an absent without approved leave (AWOL) status for 3 hours and 45 minutes.
January 22, 2002	You reported for duty at 12:45pm. You were placed in an AWOL status for 4 hours and 30 minutes.
January 23, 2002	You reported for duty at 9:25am. You were place in an AWOL status for 1 hour and 15 minutes.

Your leave balances at the end of pay period 1 (January 26, 2002) are 5 hours of annual leave and 5 hours of sick leave.

As a federal employee, you are expected to report to work and perform the duties of your position. When this process is interrupted by using excessive unscheduled leave, it places an unnecessary burden on other staff members who must perform your duties in your absence. This affects productivity and has an adverse impact on the continuity of the office. Specifically, three (3) staff members were left with the responsibility of performing your duties when you are late or absent from duty.

The earning of annual and sick leave is a right granted to all federal employees, but the usage of that leave must be approved by the employee's supervisor or otherwise conform to Agency and OPM regulations.

As your supervisor, I am concerned about your overall health and well-being. At the same time, I have an obligation to assure that work in this office is completed in a timely and efficient manner. Moreover, you have an obligation to this office, which is to report to work regularly, perform satisfactorily and fulfill your assigned responsibilities.

Despite my repeated counseling to you regarding your use of leave, you have failed to improve the management and use of your leave.

Your time and attendance record remains unacceptable. Therefore, since you have failed to improve the management and use of your leave and have failed to exert the appropriate self-management to correct this matter, you are being advised of the specific requirements that will apply to your use of leave. These requirements are effective immediately.

Annual Leave

No annual leave (except emergency) will be granted unless scheduled and approved in advance. Annual leave must be scheduled at least one week in advance of its intended use by completing Standard Form (SF) 71, (Request for Leave or Approved Absence).

Sick Leave

No sick leave will be granted without the appropriate a medical documentation certifying to the incapacitation for duty, examination, or treatment for the period of your absence. Upon your return to duty, you must submit your medical documentation to me. Failure to provide the medical documentation upon your return to duty will result in a charge of AWOL for the time of your absence.

Emergency Annual/Sick Leave

If an emergency situation arises in which you are prevented from reporting to work, you are to notify me no later than 9:15am on that date. If I am not available, you are to speak with XXXXX directly.

For emergency sick leave, upon your return to work, you must provide medical documentation supporting your absence. Your failure to contact me to request leave, or provide sufficient medical documentation in support of your absence will result in your being charged AWOL.

For emergency annual leave, upon your return to work, you must provide appropriate documentation to support your absence. Failure to contact me to request leave or provide the appropriate documentation in support of your absence will result in your being charged AWOL.

In addition, you are advised that disciplinary action, up to and including removal, will be taken for excessive accrual of AWOL and for failing to follow these prescribed leave procedures.

These guidelines have been imposed to assist you in improving your attendance. Upon your receipt of this memorandum, these restrictions will be in effect for three (3) months during which your attendance will be closely monitored. If your use and management of leave does not improve, this memorandum of leave restriction may be extended or other corrective action may be taken. If you demonstrate sustained improvement regarding your use and management of leave, this memorandum of leave restriction will be rescinded in writing.

If you are experiencing concerns or personal issues that could require assistance or counseling services, the Employee Assistance Program (EAP) is available to you. XXX is the Agency's EAP Counselor and he is able to provide counseling/assistance to employees who may be experiencing emotional, family, alcohol/drug, legal, marital, financial, or medical problems. The EAP is confidential and voluntary. He can be reached at XXX.

If you have any questions or require additional information, I am available to discuss this matter with you.

Please sign, date and return the accompanying Acknowledgment Form as acknowledgment of your receipt of this memorandum.

Attachment: Acknowledgment of Receipt

S A M P L E

MEMORANDUM

**TO: Employee
 Title
 Organization**

**FROM: Supervisor
 Title
 Organization**

SUBJECT: Letter of Reprimand

This Letter of Reprimand is issued to you based upon the following:

During the monthly “coverage calendar” issued July 31, 2001, you were assigned the duty of Duty Officer (DO) for August 30, 2000.

On August 30th, when called upon by XXX to assume that duty in her absence, you failed to do so. When this was brought to my attention, I came to your office and asked you to come to the reception area desk and assume your DO duties. Specifically, I instructed you to come to the reception area and perform the DO duties in XXX’s absence four times. Each time you refused my instruction and failed to comply. During this discussion, you were rude, challenging and confrontational.

Later, you stated you were going to lunch without arranging for someone to take over your responsibilities. When I instructed you to arrange for someone to stand in for you, you again refused. I stated that I was not going to argue with you and stepped out into the hall to go to an appointment. You followed me into the public hall, stating in a loud voice, “I’m not going to argue with you either. It’s not my job, it’s yours.”

On DATE, it was necessary to meet with you and two other team members to resolve questions concerning your apparent failure to perform DO duties on two other occasions. In both meetings, you were rude and disrespectful to the team members and to me, refusing to address the issues and activities in question. Further, you repeatedly refused to cooperate, stating only that you, “do not appreciate being asked all these pointed questions,” and, “I have nothing to say.”

Your refusal to provide any responses, answer my questions directly or cooperate in any way resulted in both meetings ending without resolution of the issues.

These are but the latest in a pattern of irresponsible, rude, combative and offensive behaviors, which continue to escalate in severity and frequency.

As your supervisor, whenever I give you instructions, guidance or discuss issues regarding your work assignments, you respond in an insolent, disrespectful, and belligerent manner. Not only do you subject me to this type of behavior, but you also treat your co-workers in the same rude and disrespectful manner. You simply reject any correction or instruction from any source.

Your conduct is unacceptable. Your defiant, abusive outbursts both in the office and in public cannot and will not be tolerated.

This Letter of Reprimand will be placed in your Official Personnel Folder (OPF) for a period not to exceed one year from the date of this memorandum. I considered more severe action, but this is your first documented offense of this nature. If you engage in similar misconduct in the future, you will be subject to more severe disciplinary action, up to and including removal.

If you wish to grieve the issuance of this Reprimand, you may forward your grievance to XXX, at Step 1 of the Conflict Resolution Procedure, HR Directive XXX (or via NGP in union contract, if applicable). If you elect to do so, your grievance must be filed no later than five (5) calendar days after your receipt of this memorandum.

If you are experiencing concerns or personal issues that could require assistance or counseling services, the Employee Assistance Program (EAP) is available to you. XXX is the Agency's EAP Counselor and he is able to provide counseling/assistance to employees who may be experiencing emotional, family, alcohol/drug, legal, marital, financial, or medical problems. The EAP is confidential and voluntary. He can be reached at XXX.

If you are experiencing technical problems with your work or require any assistance from me, please do not hesitate to contact me. I am, as always, available to assist you at any time.

If you have questions regarding this reprimand or pursuing a grievance regarding its issuance, you may contact (OHR Staff Member), Office of Human Resources, at XXX.

Please sign, date and return the accompanying Acknowledgment Form as acknowledgment of your receipt of this memorandum.

cc: OHR/OPF Copy

Attachment: Acknowledgment of Receipt

S A M P L E

MEMORANDUM

**TO: Employee
 Title
 Organization**

**FROM: Supervisor
 Title
 Organization**

**SUBJECT: Unacceptable Performance and Performance Improvement Period
 (PIP)**

Since **(date or beginning of rating cycle)**, as your immediate supervisor, I have observed your performance and have determined that your overall performance is unacceptable. I am concerned about your performance deficiencies and encourage you to improve your performance during the 60-calendar day opportunity period.

As an JOB TITLE & GRADE, your Critical Elements are the following:

- 1.
- 2.
- 3.
- 4.
- 5.

Critical Element #3 includes the following duties and responsibilities:

-
-
-
-
-

Your performance on this Element is Unacceptable, as evidenced by the following examples:

- **(List instances of incomplete and/or unsatisfactory work performance. Please include any advice, counseling or guidance provided to the employee regarding these instances.)**

This memorandum serves as notice that your performance is unacceptable and that you will be provided an opportunity to improve your performance. In accordance with Agency Directive 430.2, Performance Management System, you will have 60 calendar days from receipt of this memorandum to demonstrate acceptable performance.

During the 60-calendar day opportunity period, as your immediate supervisor, I will be available to offer closer supervision, guidance and assistance you in improving your performance. In addition, **(identify specifics of assistance that will be provided, i.e., formal or on-the-job training; meeting with the employee each Friday at 10:00 a.m. to review the previous week's work; the employee providing a daily itinerary of assignments performed at the end of each workday; and reminding the employee that whenever they experience concerns or obstacles regarding the completion of assignments, these matters should be brought to the supervisor's immediate attention.)**

At the conclusion of the 60-calendar day period, I will reassess your performance. performance rating. If your performance improves to the fully successful level or higher, no further performance related action will be taken at that time. However, you are advised that this PIP notice will remain in effect for one year from the date of issuance. Thus, while your performance may improve to the fully successful level during this 60-calendar day period, you are advised that your performance may not fall below the fully successful level during this one-year period, or an action to reassign, demote or remove you may be proposed during this one-year period without offering you another opportunity to improve your performance.

If your performance on this critical element, your overall performance will be unacceptable, which will result in your reassignment, demotion, or removal.

If you are experiencing concerns or personal issues that could require assistance or counseling services, the Employee Assistance Program (EAP) is available to you. XXX is the Agency's EAP Counselor and he is available to provide counseling/assistance to employees who may be experiencing emotional, financial, substance abuse, legal, marital or medical problems. The Employee Assistance Program is voluntary and confidential. He may be reached at XXX.

I am available to discuss this matter with you. If you have any questions concerning your procedural rights in this matter, you may contact **(OHR Staff Member)**, Office of Human Resources, at XXX.

Please sign, date and return the accompanying Acknowledgment Form as acknowledgment of your receipt this memorandum and attachments.

Attachment: Position Description

Performance Appraisal Plan

Any other referenced supporting documents (i.e., Mid-year review,
Counseling memoranda, or training record)

Acknowledgment of Receipt

S A M P L E

MEMORANDUM

**TO: Employee
 Title
 Organization**

**FROM: Supervisor
 Title
 Organization**

SUBJECT: Denial of Within-Grade Increase

This is to advise that your Within-Grade Increase (WGI) to Step [____] of the GS-[____] grade level, which was due **[Enter Appropriate Month/Date/Year]**, was denied based upon your failure to perform at an acceptable level of competence (Fully Met Expectations or higher). In accordance with XXX Directive 430.2 and 5 C.F.R. § 531, in order to receive a WGI, an employee's performance must be rated at an acceptable level of competence (Fully Met Expectations or higher).

As an JOB TITLE & GRADE, your Critical Elements are the following:

-
-
-
-
-

On Critical Element # X, you have failed to perform in a fully acceptable manner as documented below:

- GIVE EXAMPLES
-
-
-

Therefore, in consideration of the above, your WGI to the Step X level is denied.

If you do not agree with this decision, you may request reconsideration. Your request for reconsideration must be made in writing and submitted within fifteen (15) calendar days

of your receipt of this memorandum. Your request for reconsideration must be forwarded to XXX, at XXXX..

Consideration will be given to extending this period if you timely submit a written request stating the reasons for such an extension. You will be notified in writing of the decision after consideration of your reply. If no reply is made, a decision will be made at the expiration of the time allowed for your reply.

You are entitled to be represented by an attorney or other representative of your choosing. You must designate your representative, in writing, to **(OHR Staff Member)**, Office of Human Resources, XXX.

In addition, you may receive up to XXX hours of administrative leave to prepare your reply to the denial. To schedule use of the administrative leave, you must submit, in advance, an SF-71 (Request for Leave or Approved Absence).

If you are experiencing concerns or personal issues that could require assistance or counseling services, the Employee Assistance Program (EAP) is available to you. XXX is the Agency's EAP Counselor. He is available to provide counseling/assistance to employees who may be experiencing emotional, financial, substance abuse, legal, marital or medical problems. The EAP is voluntary and confidential. He may be reached at XXX.

If you have any questions concerning your procedural rights in this matter, you or your representative may contact **(OHR Staff Member)**, Office of Human Resources, at XXXX.

Please sign, date, and return the accompanying Acknowledgment Form as acknowledgment of receipt of this memorandum and attachments.

Attachments: Acknowledgment Form

S A M P L E

MEMORANDUM

**TO: Employee
 Title
 Organization**

**FROM: Supervisor
 Title
 Organization**

SUBJECT: Termination During Probationary Period

On DATE, you were appointed to the position of XXX with this Agency. Your appointment provided for a one-year probationary period. The probationary period is established as an extension of the employment examination process and provides the opportunity to evaluate actual performance and conduct on the job. During this period, you are expected to demonstrate an appropriate and satisfactory level of performance and conduct in order to continue employment with this agency.

As outlined below, your PERFORMANCE AND/OR CONDUCT has not been in accord with agency expectations – GIVE EXAMPLES AND REFER TO ANY PRIOR DISCIPLINE OR COUNSELINGS

Therefore, your employment with this Agency will be terminated effective DATE, at the end of your tour of duty at 5:30 p.m.

If you believe that this action is being taken because of your race, color, religion, sex, national origin, age, or handicapping condition, you may file a discrimination complaint of discrimination. If you wish to do so, please contact XXX, Director, Equal Employment Opportunity, at XXX. You also have the right to file an appeal with the U.S. Merit Systems Protection Board MSPB), on the limited grounds that it was based on political affiliation or marital status. The MSPB Appeal Form is attached and must be filed within 30 days of the effective date of this decision.

If you have any questions concerning your procedural rights in this matter, you may contact (ELR Staff Member), Office of Human Resources, at (202) 220-XXXX.

Please sign, date and return the accompanying Acknowledgment Form as acknowledgment of your receipt of this memorandum.

Attachment: Acknowledgment Copy

S A M P L E

MEMORANDUM

TO: **Employee**
 Title
 Organization

FROM: **Supervisor**
 Title
 Organization

SUBJECT: **Decision on Proposed 7-Day Suspension**

I. Introduction

By memorandum dated September 11, 2001, XXX, TITLE, proposed to suspend you for seven days for Rude, Disrespectful and Unprofessional Conduct Towards a Co-worker.

In correspondence dated September 24, 2001, you provided a written response to the proposed action in which you denied the allegations against you, as you also did in your oral reply meeting on September 25, 2001.

I will address the charge and the issues raised in your replies.

II. Charge EXAMPLE

Rude, Disrespectful and Unprofessional Conduct Towards a Co-Worker

You were charged with rude, disrespectful and unprofessional conduct arising from an incident involving one of your co-workers, XXX. On the morning of August 20, 2001, she requested that you come to her office. Upon your arrival, she asked if you had completed printing the courier designs that she had requested from you previously. You told her that printing the courier designs was not on your list of priorities. After Ms. _____ reminded you that the original request for the designs was made in May, you responded that you would not print the courier designs because they would jam your design computer. When Ms. _____ suggested that you print the courier designs on another office computer, you refused to do so. When Ms. _____ asked you if you were refusing to do the assignment, you responded acrimoniously "I will not do them on any design computer - period!"

Ms. _____ reported that you then left her office and approached Graphics Assistant _____ desk. You proceeded to speak in a loud manner to Ms. _____ about

your discontent with Ms. _____ request. Ms. _____ stated that you returned to her office a few minutes later with her files, slammed the files on her desk and stated something to the effect of “I am through with you.” You again told Ms. _____ that you did not work for her.

Ms. _____ then approached Ms. _____ and asked her to do the courier designs. You followed Ms. _____ out of her office and, while standing at Ms. _____ desk, you stated sarcastically, “This is _____ your Graphics Assistant - I don’t work for you.”

Ms. _____ began explaining the details of the assignment to Ms. _____ when you continued to engage in loud, disruptive and unprofessional behavior. You continued to yell, “I don’t work for you,” and various other comments. Ms. _____ interrupted her conversation with Ms. _____ and told you that you were being unprofessional and that she would not discuss the matter any further.

Ms. _____, Assistant Graphics Designer, who was working in her office located down the hall, also reported that she heard your outburst take place. Ms. _____ stated that you were yelling various comments repeatedly, including, “It’s not my job,” and “I don’t work for you.”

- In both your replies, you denied the charge against you. You stated that you had a “general discussion” with Ms. _____ and that your behavior was in no way rude or disrespectful.
- You stated in your written reply that the discussion did not get loud and that you could not explain why Ms. _____ reported any disruption. However, in your oral response, you acknowledged that the discussion was perhaps louder than it should have been. Nonetheless, you maintained that your actions were in no way unprofessional.
- You further stated that you could not explain Ms. _____ statements regarding your demeanor, and you further asserted that Ms. _____ account of the incident did not make any reference to you being loud, rude or disrespectful.

I have examined the facts in this matter and disagree with your assessments. Based on the witness statements, I have determined that you acted inappropriately and unprofessionally. Your demeanor towards Ms. _____ was sarcastic and argumentative. Neither Ms. _____ nor any other staff member should have to be subjected to that type of discourteous behavior. Moreover, this type of misconduct will not be tolerated.

- In your written and oral replies, you denied having been counseled by me in the past for a similar incident involving another staff member. You acknowledged that you and I have had discussions regarding work-related matters; however, you

indicated that these discussions were initiated by you and, therefore, did not constitute formal counseling.

Again, I disagree. Regardless of who initiated these discussions, you have been previously counseled you regarding your tone, demeanor and conduct in the workplace. Written documentation of these meetings has been provided to you. Accordingly, you were on notice that any future incidents of unprofessional conduct would result in corrective action being taken against you.

III. Conclusion

In reaching my decision, I have considered the entire record, which includes your written and oral responses, and the case file in support of the disciplinary action. I have also considered the following:

❑ *the nature and seriousness of the offense;*

The charge against you is a serious matter. You have previously engaged in verbal altercations in the office and have been counseled about your actions. This behavior is inappropriate and disruptive to your co-workers and other Agency staff. Furthermore, these incidents create an unprofessional working environment for all concerned and contribute to an atmosphere of stress in the workplace.

In addition, your unwillingness to acknowledge any wrongdoing on your part further exacerbates the situation as it suggests an inability to accept responsibility for your actions. This is of particular concern to me because it calls into question your professional integrity.

❑ *the impact of your actions upon your position as a Graphics Assistant and the offense upon this Agency;*

As a Graphics Assistant, you are expected to conduct yourself in a civil, courteous, and professional manner at all times. In the performance of your duties, you interact daily with Agency staff members. Disrespectful and discourteous treatment of supervisors and co-workers is inappropriate and unacceptable. Furthermore, engaging in conduct as described above reflects negatively upon the Agency, and is inconsistent with the civil and professional work environment required of this Agency.

❑ *the employee's past disciplinary record;*

You have been counseled by your immediate supervisor in the past for similar unprofessional behavior.

❑ *the employee's employment record and length of service;*

You have been an employee with the Agency since November 1999. Your performance has been satisfactory.

- ❑ *the impact of your performance and conduct upon your supervisors' confidence in your ability to perform your duties;*
Your actions as stated in the above charge demonstrate your tendency to conduct yourself in a manner that does not reflect civility, professionalism and courteousness as required of a federal agency employee. With this most recent incident, you have demonstrated a pattern of misconduct that has been directed not only at your supervisor, but your co-workers as well.
- ❑ *consistency of the penalty;*
Since January, 2001, depending upon the severity of the misconduct, disciplinary actions have been taken for (1) Conduct Unbecoming an Employee and (2) Rude and Disrespectful Conduct Towards a Co-worker. Penalties in these cases ranged from a letter of reprimand to removal.
- ❑ *the notoriety of the offense or its impact upon the reputation of the Agency;*
The matter at issue had a negative impact upon the Graphics and Design Office. Your angry outburst was directed towards a co-worker and was witnessed by another staff member. This behavior is clearly unacceptable and reflects unfavorably upon the Agency.
- ❑ *potential for rehabilitation; and*
Again, this is an area of considerable concern. You failed to acknowledge any wrongdoing or accept responsibility for your actions. This indicates that you are unwilling to correct the behavior; however, any future reported instances of rude, disrespectful, and/or unprofessional conduct may lead to progressive disciplinary action being taken against you, up to and including removal.
- ❑ *the effectiveness of alternative sanctions to deter such conduct in the future;*
This action is being taken to promote the efficiency of the Service and, given that prior counseling did not have the intended corrective effect, the penalty in this instance is appropriate to the seriousness of the charge.

I have determined that the charge is sustained by a preponderance of the evidence. Therefore, based upon the above, and in order to promote the efficiency of the Service, I have decided to sustain the proposed action and suspend you seven (7) calendar days. You will be suspended from duty without pay on the following dates: October 20-27, 2001.

If you wish to grieve this decision, you may forward your grievance to XXX pursuant to Step 1 of the Conflict Resolution Procedure, HR Directive 771.1. If you elect to do so, your grievance must be filed with XXX no later than five (5) calendar days after your receipt of this memorandum. (OR VIA NGP IN UNION CONTRACT, IF APPLICABLE)

If you believe that this action is being taken because of your race, color, religion, sex, national origin, age, or handicapping condition, you may file a discrimination complaint.

If you wish to do so, please contact XXX, Director, Equal Employment Opportunity, at XXX.

If you have any questions concerning your procedural rights in this matter, you or your designated representative may contact **(OHR Staff Member)**, Office of Human Resources, at **XXXX**.

Attachment: Acknowledgment of Receipt

S A M P L E

MEMORANDUM

**TO: Employee
 Title
 Organization**

**FROM: Supervisor
 Title
 Organization**

SUBJECT: Decision on Proposed Removal

Charge

By memorandum dated October 12, 2001, _____, NAME & TITLE, proposed to remove you from your position as an XXX for providing false statements regarding your prior federal employment on: (1) the Declaration for Federal Employment, OF-306, and (2) your background security investigation form (Questionnaire for Public Trust Positions, SF-85P).

On October 21, 2001, your representative, _____, advised the Agency that you had retained her firm, _____ & _____, Attorneys at Law, to represent you. As such, Ms. _____ provided a copy of a Designation of Representation executed by you indicating your retention of the firm's services.

In addition, Ms. _____ requested that the Agency provide you an opportunity to review all of the material relied upon to support the proposed action as well as copies of that material, which included specific documentation. This was done on January 15, 2002. Your requests for extensions of time to respond were granted.

On February 15, 2002, you and your representative, Ms. _____, presented your oral reply to the proposed action.

In your oral reply, your attorney gave an opening statement in which she indicated your admission to making false statements on the OF-306 and SF-85P forms concerning your prior employment with the XXX. Ms. _____ further indicated that despite your actions, it was not your intent to deceive the Agency.

The record for this matter includes your oral reply with your affidavit and the Agency case file, which was forwarded to you with the proposal memorandum. Your response to this matter did not include a written reply.

I will address the charge, specifications identified, and the issues raised in your oral reply in the order in which they appear in the proposed action.

Charge

Providing False Statements Regarding Prior Federal Employment on your Declaration for Federal Employment (OF 306) and Questionnaire for Public Trust Positions (SF 85P)

Specification #1

In applying for employment as an XXX, you were required to fill out a security package of pre-employment forms to initiate a background investigation. You completed and submitted to CSOSA Form OF-306, "Declaration for Federal Employment."

Based upon the record, in response to question #11 on form OF-306, that specifically asked you, "During the last 5 years, were you fired from any job for any reason, did you quit after being told that you would be fired, did you leave any job by mutual agreement because of specific problems, or were you debarred from Federal employment by the Office of Personnel Management?" you answered, "No."

You further signed and dated this document as the applicant in block #16a on November 16, 1999, certifying that all of the information on and attached to the Declaration for Federal Employment, including any attached application materials, was true, correct and complete.

The record also reflects that on December 29, 1999, upon your appointment to this Agency, you again signed and dated this document as the appointee in block #16b certifying that all of the information on and attached to the Declaration for Federal Employment, including any attached application materials, was true, correct and complete. Your response of "No" remained the same in spite of having an additional opportunity to rethink and revise your answer to be true, correct, and complete as you certified.

During your oral reply, your counsel advised that you admitted the statement was false. However, you stated that you did not intend to deceive the agency when you answered the questions and that you believed that you were allowed to answer the question "No" vs. "Yes," because during the signing of the settlement agreement between you and the XXX Agency, YYY of that Agency, advised you that "it would be as if it had never happened."

You explained that to resolve the conflict you had in understanding the provisions of the settlement agreement in light of the aforementioned statement, you contacted Ms. ZZZ at the XXX personnel office. You stated that you asked Ms. _____ what response would be given by personnel to perspective employers seeking an employment reference. You indicated that Ms. _____ response to you was that the personnel office would advise that you resigned. You were asked why you did not refer these questions to your representative and/or your legal counsel, who both represented you in this matter, instead of contacting XXX personnel office staff. You initially stated that your representative was a “yes man” to management and then later replied, “I don’t know.” Furthermore, you have provided no documentation from Ms. _____ in support of your representation that her advice would have you to believe that you should have answered the questions as you did.

During your oral reply, you stated, “I am not going to sit here and tell you that I didn’t do it. A mistake has been made.” Under the circumstances, your explanation is unconvincing that you believed continually answering a question falsely and furthermore certifying to the truthfulness in doing so could have been a simple mistake. Your admittance to providing false statements regarding your prior federal employment on your OF-306 and SF-85P clearly affirms the events as outlined in the charge and, thus, establishes that your answers were not only incorrect, but knowingly false.

Specification #2

When you were hired by this Agency as an XXX in December 1999, you completed and submitted form SF-85P, “Questionnaire for Public Trust Positions” for the initiation of the Office of Personnel Management’s (OPM) limited background investigation.

Question #12 on the SF-85P specifically asked you, “Has any of the following happened to you in the last 7 years? If “Yes,” begin with the most recent occurrence and go backward, providing date fired, quit, or left, and other information requested.”

The SF-85P further instructed you to:

“Use the following codes and explain the reason your employment was ended:

6. Fired from a job.
7. Quit a job after being told you’d be fired.
8. Left a job by mutual agreement following allegations of misconduct.
9. Left a job by mutual agreement following allegations of unsatisfactory performance.
10. Left a job for other reasons under unfavorable circumstances.”

You answered, “No” in response to this question.

The instructions above the signature block on page 7 of the SF-85P state: "After completing this form and any attachments, you should review your answers to all questions to make sure the form is complete and accurate, and then sign and date the following certification and sign and date the release on page 8."

The certification statement specifically reads as follows:

"Certification That My Answers Are True

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both."

On November 16, 1999, on the SF-85P below the above instructions, you signed and dated this document certifying that your answers were true. This occurred just several months after you completed and signed the settlement agreement with the XXX. It is a reasonable expectation that you knew or should have known that it was improper for you to answer the above referenced questions with a "No" response.

Based upon the record, once again, you knowingly provided false information relative to your prior Federal employment.

Based upon the record, when questioned during a Personal Subject Interview (PSI), you stated that you were a former police officer with the XXX and resigned from the position in September 1999. You stated that you "left this position to obtain a job with greater career advancement." You also stated, that within the last seven years you have not been fired from a job, have not quit a job after being told you would be fired, have not left a job by mutual agreement following allegations of misconduct, have not left a job by mutual agreement following allegations of unsatisfactory performance, and have not left a job for other reasons under unfavorable circumstances. The statements you provided during the PSI were false.

Further, based upon the record I find the following:

- You knew that you had been issued a memorandum in February, 1999 while employed with the XXX, informing you of a proposal to remove you from your position. In September, 1999, you were issued a memorandum concurring with the proposal to remove you from your position based on misconduct. On September 14, 1999, your removal was ordered; however, in lieu of the decision to remove you, the XXX and your legal representative reached a settlement agreement, which allowed you the option of resigning from your position effective immediately. You entered into the settlement agreement and resigned your position.
- Although the settlement agreement allowed you an opportunity to resign from your position rather than to be removed under any adverse circumstances, it did not

absolve you of the responsibility to answer the questions truthfully on the OF-306 and SF-85P regarding your prior federal employment. The historical facts leading up to the signing of the agreement remained. The questions were clear and straightforward and required a “Yes” answer. You have not proffered a credible explanation as to why you believed that you could answer these questions otherwise. If for some reason these questions appeared to be ambiguous to you and/or if you were confused, you had several opportunities to explore other options to obtain assistance, such as contacting our Personnel or Security offices that in fact provided you with the documentation to clarify any misunderstanding in your mind. You chose not to do so.

- You knew or should have known by signing the settlement agreement with the XXX and then several months later answering the questions relative to your prior federal employment with an incorrect “No” response, that you were answering the questions falsely. These questions were clear, concise, and straightforward enough to require a simple truthful answer.
- You knew or should have known that when you answered “No” to the question on the SF-85P regarding your employment record, that you were being untruthful because the question clearly asked “Has any of the following happened to you in the last 7 years? ...Fired from a job, Quit a job after being told you’d be fired, Left a job by mutual agreement following allegations of misconduct, Left a job by mutual agreement following allegations of unsatisfactory performance, Left a job for other reasons under unfavorable circumstances.” This question is not in any way ambiguous and therefore solicits a straightforward response.
- You knew or should have known that when you answered “No” to the question on the OF-306 regarding your prior federal employment, that you were being untruthful, because the question clearly asked “During the last 5 years, were you fired from any job for any reason, did you quit after being told that you would be fired, did you leave any job by mutual agreement because of specific problems, or were you debarred from Federal employment by the Office of Personnel Management?” Again, this question is not in any way ambiguous and therefore solicits a straightforward response. It is not credible that you could have thought that your *resignation*, in lieu of removal from the Service should in and of itself alter your response to the question in its totality to “No.”
- The instructions on the OF-306 and the SF-85P are clear regarding the requirement to report accurate, correct, true or complete information. Further, the instructions on both documents are quite clear regarding the consequences for providing false, untrue, inaccurate or incorrect information.
- Based upon your oral reply, you believed that the XXX, if contacted by a potential employer, would not comment negatively or positively on your past employment experience. However, the agreement makes it clear that they would not be bound by the terms of the agreement should the potential employer be another *law enforcement* agency. During your oral reply, you indicated that you were aware that this Agency

was a *law enforcement* agency. Furthermore, you had an opportunity to contact our Personnel Office and/or Office of Security prior to completing and submitting the forms, to clarify and if needed to get a better understanding of the questions in an effort to assist you in providing a truthful and accurate response. You chose not to do so. It is not credible that you would have thought that XXX agency's alleged statement to you over the phone overrode the terms and conditions of the signed settlement agreement.

III. Conclusion

In reaching my decision, I have considered the entire record, which includes your oral reply and the case file in support of the proposed disciplinary action. I have also considered the following:

- *the nature and seriousness of the offenses;*

The offenses raised against you are very serious in nature. At the very heart of the employee - employer relationship is the expectation that an employee is honest, candid and engages in ethical conduct. Throughout this process, your lack of candor regarding this matter is unacceptable. You have failed to demonstrate honest, trustworthy, and ethical conduct.

- *the impact of your actions upon your position as an XXX and the offense upon this Agency;*

As an XXX, you are a law enforcement official and as such are held to a higher standard of conduct. You hold a position of public trust and are expected and required to conduct your self in a manner that reflects honesty, integrity, and trustworthiness. Your actions regarding this matter impeach your reliability, veracity and trustworthiness as a law enforcement officer. As an employee of this agency, you must demonstrate the ability to provide truthful and accurate disclosures and responses regardless of the consequences or impact to you, personally. You have had repeated opportunities to provide candid and accurate responses. You have failed to do so. Such conduct is inconsistent with our mission and your position as a law enforcement officer.

- *the opportunities you had to provide correct and accurate information regarding your prior federal employment;*

As part of the pre-employment process, you completed and submitted to Form OF-306 on November 16, 1999. This occurred several months after you completed and signed the settlement agreement with the XXX relative to your federal employment. On December 29, 1999, upon your appointment to this Agency you again signed and dated this document. As part of your employment requirements, you completed and submitted to Form SF-85P. Each document presented you with an opportunity to divulge to this Agency any concerns you

had in answering the questions and to ensure that you were providing accurate and correct information regarding your prior federal employment. When questioned during a Personal Subject Interview, you continued to provide the same false information and did not provide any further explanation.

- ❑ *the employee's employment record and length of service;*

You have been an employee here since December, 1999. Your performance has been satisfactory. There are no prior documented disciplinary or performance-based actions of record. However, I believe this is outweighed by your false responses on the OF-306 and the SF-85P, which prevented us from making a fully informed assessment of your qualifications based on accurate information.

- ❑ *the impact of your performance and conduct upon your supervisors' confidence in your ability to perform your duties;*

Your actions and lack of candor as stated in the above charge demonstrates your inability to conduct yourself in a manner that reflects the honesty, integrity, and trustworthiness that is required of a law enforcement official.

- ❑ *consistency of the penalty;*

This penalty is consistent with other actions taken for similar offenses, as noted in the Proposal.

- ❑ *consistency with table of penalties;*

This Agency does not utilize a table of penalties;

- ❑ *the effectiveness of alternative sanctions to deter such conduct in the future;*

Based upon the totality of your actions, the entire record, the seriousness of the offenses, your position as a law enforcement officer, our mission, your lack of candor throughout this process, and my determinations regarding these offenses, removal from your position is the most effective and appropriate action.

I have determined that the charge and specifications are sustained by a preponderance of the evidence. Therefore, based upon the above, and in order to promote the efficiency of the Service, I have decided to sustain the proposed action and to remove you from your position as an XXX, effective April 30, 2002.

You have the right to appeal this action to the Merit Systems Protection Board (MSPB) or file a discrimination complaint. You may choose only one of these courses of action.

If you decide to appeal to the MSPB, you must do so within thirty (30) calendar days of the effective date of the action or within thirty (30) calendar days after the date of receipt

of the Agency's decision, whichever is later, to the MSPB – XXX Regional Office, XXX, at YYY. The MSPB – XXX Regional Office may be reached at XXX. Copies of the MSPB Appeal Form, Questions and Answers About MSPB Appeals, and MSPB's regulations are attached.

If you believe that this action is being taken because of your race, color, religion, sex, national origin, age, or handicapping condition, you may file a discrimination complaint. If you wish to do so, please contact XXX Director, Equal Employment Opportunity, at XXX.

If you have any questions concerning your procedural rights in this matter, you may contact **(OLR Staff Member)**, Office of Human Resources, at (202) 220-XXXX.

Attachments: MSPB Appeal Form
Questions and Answers About MSPB Appeals
MSPB Regulations

cc: Ms. _____, Attorney

ACKNOWLEDGEMENT FORM

I, _____, hereby acknowledge receipt of the document entitled _____, dated _____, _____, issued by _____. By signing this Acknowledgement Form, I am not waiving any grievance or appeal rights that may apply.

Employee Signature

Date

DISTRIBUTION:

Original: Supervisor

Copy: Employee or designated Representative

FAILURE TO ACKNOWLEDGE

I hereby affirm that I attempted to execute the above Acknowledgement Form but the employee declined to sign. I delivered the referenced document by (Personal delivery/inter-agency-mail/First Class mail/Certified mail) on _____, _____.

Name

Title

Date